

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Paul Orsello,

Plaintiff,

v.

Civil No. 14-972 (JNE/JSM)
ORDER

Steven Gaffney and Alan Tschida,

Defendants.

In April 2014, Plaintiff commenced this pro se action, applied to proceed in forma pauperis, and moved for the appointment of an interpreter. The next month, the Court denied his application to proceed in forma pauperis, denied his motion for the appointment of an interpreter, and summarily dismissed the action. In June 2014, the Court received the following request from Plaintiff:

I, Paul Orsello am requesting an extension of time to appeal the May 20th order from United States District Court. At this time, I am unable to locate the appropriate forms for the appeal and the Informal Pauperis ask for extra time to complete these forms with my disability Advocate. Otherwise, please consider this a notice of appeal.

The Court also received Plaintiff's "appeal to have a court appointed interpreter assigned to [his] case."

Notice of appeal

A notice of appeal must "specify the party . . . taking the appeal by naming each one in the caption or body of the notice"; "designate the judgment, order, or part thereof being appealed"; and "name the court to which the appeal is taken." Fed. R. App. P. 3(c)(1). Subject to exceptions not applicable here, a notice of appeal in a civil case "must

be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). “If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal.” *Smith v. Barry*, 502 U.S. 244, 248-49 (1992). Here, Plaintiff asked for an extension of time to appeal. In the alternative, he asked that his request be treated as a notice of appeal. He filed the request within 30 days after entry of judgment. The request named Plaintiff as the party taking the appeal, *cf.* Fed. R. App. P. 3(c)(2) (“A pro se notice of appeal is considered filed on behalf of the signer . . .”), and identified the order subject to appeal. Although the request did not identify the court to which the appeal is taken, the omission of the Eighth Circuit from Plaintiff’s request does not prevent the request from serving as a notice of appeal because the Eighth Circuit is the only court of appeals to which Plaintiff may appeal. *See, e.g., In re Capco Energy, Inc.*, 669 F.3d 274, 278 n.2 (5th Cir. 2012); *Pierson v. Dormire*, 484 F.3d 486, 487 n.5 (8th Cir. 2007), *vacated in part*, 276 F. App’x 541 (8th Cir. 2008) (per curiam); *Blockel v. J.C. Penney Co.*, 337 F.3d 17, 24 n.1 (1st Cir. 2003). Accordingly, the Court construes the request as a notice of appeal and directs the Clerk of Court to file it as such. *See Isert v. Ford Motor Co.*, 461 F.3d 756, 762 (6th Cir. 2006) (“As this circuit’s cases show and as the many decisions from other circuits confirm, an extension-of-time motion frequently will satisfy the modest requirements of Rule 3(c).”).

Interpreter

Docket No. 9 was filed as a motion for an interpreter. “APPEAL OF DECISION” appears below the case name and number. It may be that Plaintiff seeks to appeal the

May 2014 denial of his motion for the appointment of an interpreter. The Clerk of Court shall send a copy of Docket No. 9 to the Eighth Circuit. To the extent Plaintiff moved again for an interpreter, the Court denies the motion because he has not established a basis to appoint one.

Conclusion

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. The Clerk of Court shall file Plaintiff's motion for extension of time to appeal [Docket No. 8] as a notice of appeal. The Clerk of Court shall terminate the motion at Docket No. 8.
2. Plaintiff's motion for an interpreter [Docket No. 9] is DENIED. The Clerk of Court shall send a copy of Docket No. 9 to the Eighth Circuit.

Dated: June 30, 2014

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge